

OD-2

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/120/2025
WITH
WPO/122/2025
IA NO: GA/1/2025, GA/2/2025.

CESC LTD
VS
MD ALI AND ORS

BEFORE:

THE HON'BLE JUSTICE TAPABRATA CHAKRABORTY

AND

THE HON'BLE JUSTICE REETOBROTO KUMAR MITRA

Date: 15th July, 2025.

APPEARANCE:

Mr. Subir Sanyal, Sr. Adv.
Mr. Debanjan Mukherjee, Adv.
Mr. Somnath Bose, Adv.
...for the appellant.

Mr. Prasenjit Mukherjee, Adv.
Md. Shakir, Adv.
Mr. Jahangir Hossain, Adv.
Ms. Babita Pramanik, Adv.
...for the respondents.

1. The present appeal has been preferred by Calcutta Electric Supply Corporation Limited (hereinafter referred to as CESC) challenging an order dated 23rd April, 2025 passed by learned Single Judge in the writ petition being WPO/122/2025. By the said order the learned Single Judge directed the writ petitioner/respondent no.1 herein to pay

Rs.1,50,000/- within a period of 7 days along with reconnection charges without prejudice to the rights and contentions of the parties. It was also directed that upon such payment CESC will reconnect the electricity connection of the writ petitioner and he shall go on paying the current bills. It was further observed that the said interim order shall remain in effect for a period of two months from date and that the matter will be taken up for hearing after three weeks when CESC shall produce the relevant records.

2. Record reveals that the writ petition was preferred challenging *inter alia* the final order of assessment dated 5th June, 2023. The said order was preceded by an order of provisional assessment dated 24th May, 2023 passed on the basis of an inspection report. The provisional assessment was quantified to be Rs. 5,15,590/-. In the writ petition it was averred *inter alia* that though by the order of provisional assessment it was directed that the hearing would be granted to the writ petitioner on 7th June, 2023, the order of final assessment was surprisingly issued two days prior thereto on 5th June, 2023. It was also averred that after issuance of the final order of assessment, the writ petitioner repeatedly approached the authorities as the provisional assessment order was erroneously passed considering the load to be 6 KW which is equal to 27 Amp though in the inspection report it was stated that '*while taking photographs it drops to 5 Amp*'.

3. Mr. Sanyal, learned Senior Advocate appearing for the appellant strenuously argues that the learned Single Judge did not consider the maintainability of the writ petition prior to issuance of the interim order though such issue of maintainability was specifically urged by the appellant. The writ petition was preferred about one and half years after the final order of assessment without furnishing any explanation as to why the writ petitioner waited for such a long period before approaching the writ Court, moreso when in the midst thereof, the statutory period for preferring an appeal had long expired. The writ petitioner deliberately slept over the issue and in the said conspectus, the learned Single Judge ought not to have exercised discretion in his favour.
4. He further argues that the writ petitioner himself admitted that his authorized representative attended the hearing before the Assessing Officer on 7th June, 2023 and admitted the unauthorized use of electricity at the premises. Inadvertently, the date of the final order of assessment was printed as '5.6.2023' in place of '7.6.2023'. However, no contemporaneous representation was submitted by the writ petitioner pointing out such fact though he received the said order on 15th June, 2023. Ignoring the said sequence of facts, the learned Single Judge erroneously passed the impugned order.
5. Drawing our attention to the third proviso of Section 135(1A) of the Electricity Act, 2003 (hereinafter referred to as the 2003 Act) and Regulation 6.3 of notification no. 55 dated 7th August 2013, Mr. Sanyal

submits that it is a statutory mandate that reconnection can only be effected only after the assessed amount is paid. The direction towards reconnection only upon payment of Rs. 1,50,000/- is thus unsustainable in law. Such arguments, as advanced, were glossed over by the learned Single Judge and no finding was returned on the same. Such infirmity warrants interference of this Court. Reliance has been placed upon the judgments delivered in the cases of *Sudipta Koley Vs. Smt. M Bhowmick and Anr* in WP No. 8 of 2019 and *Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) And Another Vs. Sri Seetaram Rice Mill*, reported in (2012) 2 SCC 108.

6. Mr. Mukherjee, learned Advocate appearing for the writ petitioner/respondent no.1, however denies and disputes the contention of Mr. Sanyal and submits that the statement that due to a typographical error, the date of the final order of assessment was incorporated as '5.6.2023' in place and stead of '7.6.2023', at best, could have been the version of the Assessing Officer but the said officer is not an appellant in the present appeal.
7. Drawing our attention to the contents of the provisional and final orders of assessment, Mr. Mukherjee submits that there is no discussion as to why the assessment was made on the basis of 6 KW when admittedly the inspection report revealed that the load stood reduced to 5 Amp. In view of such error in the decision making process, the interim order was passed and there is no infirmity in the same.

8. He submits that after service of the final order of assessment, the writ petitioner repeatedly approached the authorities and requested for reconnection but in response thereto, he was handed over a format of undertaking in an affidavit form to accept the liability towards unauthorized use of electricity. In view thereof, the writ petitioner was constrained to approach the writ Court as it became impossible for him to survive without electricity. Right to have electricity comes within the ambit of a fundamental right and by denying reconnection, such right of the writ petitioner had been infringed.
9. In reply, Mr. Sanyal submits that the Assessing Officer, as defined in Section 126 of the 2003 Act, is an officer of CESC and as such the direction towards reconnection can be challenged by CESC. The writ petitioner has miserably failed to disclose any genuine reasons as to why he could not avail the remedy of statutory appeal.
10. We have heard the learned Advocates appearing for the respective parties and considered the materials on record.
11. It is no longer *res integra* that the existence of an alternative remedy is not an absolute bar against maintainability of a writ petition under Article 226 of the Constitution of India. The existence and pursuit of an alternative remedy before invoking writ jurisdiction as held by the Hon'ble Supreme Court on numerous occasions, is more of a rule of convenience than a rule of law. The decision making process was found to be erroneous in as much as the provisional assessment amount was

quantified taking the load to be 6 KW though from the photographs it revealed that the load was of 5 Amp. Such inconsistency was also not considered by the Assessing Officer while issuing the final order of assessment. In such facts and circumstances, we are unable to accept the argument of Mr. Sanyal that as an alternative remedy was available to the writ petitioner, the writ Court ought not to have entertained the writ petition, moreso when the Assessing Officer, who conducted the inspection, is not aggrieved by the order passed by the learned Single Judge and is not the appellant in the present appeal.

12. In the provisional assessment order there was a direction upon the writ petitioner to attend a hearing on 7th June, 2023. However, the date of the final order of assessment was stated to be '5.6.2023' in place and stead of '7.6.2023'. No corrigendum was issued by the Assessing Officer stating that there had been a typographical error in the said order. In the said conspectus and as the writ petitioner had been out of electricity for a substantive period of time, the learned Single Judge exercised discretion in his favour directing reconnection but that too on a condition that he has to deposit an amount of Rs. 1,50,000/- along with the reconnection charges.

13. The provisions of the third proviso of Section 135(1A) does not necessarily bar a writ petition and in the facts and circumstances of the case, the learned Single Judge rightly exercised discretion moreso when no two cases are alike on facts and therefore, Courts have to be allowed

a little free play in the joints if the conferment of discretionary power is to be meaningful.

14. For the reasons discussed above, the appeal and the connected applications are dismissed.

15. There shall, however, be no order as to costs.

16. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(REETOBROTO KUMAR MITRA, J.)

(TAPABRATA CHAKRABORTY, J.)